



February 8, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers; Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*; WC Docket Nos. 16-143, 05-25 & 17-144.

Dear Ms. Dortch:

Pursuant to the protective orders governing submissions in the business data services proceedings, Sprint Corporation (“Sprint”) hereby submits a redacted version of comments filed in response to the Commission’s October 24, 2018 *Second Further Notice and Further Notice*.¹

The unredacted comments contain highly confidential information protected under the following protective orders adopted by the Commission:

- *Modified Protective Order*² in WC Docket No. 05-25, RM-10593
- *Second Protective Order*³ in WC Docket No. 05-25, RM-10593
- *Data Collection Protective Order*⁴ in WC Docket No. 05-25, RM-10593

¹ See *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146, ¶ 152 (rel. Oct. 24, 2018) (“*Second Further Notice and Further Notice*”).

² See *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, DA 10-2075, 25 FCC Rcd. 15,168 (Wireline Comp. Bur. 2010).

³ See *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, DA 10-2419, 25 FCC Rcd. 17,725 (Wireline Comp. Bur. 2010) (“*Second Protective Order*”).

⁴ See *Special Access for Price Cap Local Exchange Carriers et al.*, Order and Data Collection Protective Order, DA 14-1424, 29 FCC Rcd. 11,657 (Wireline Comp. Bur. 2014) (“*Data Collection Protective Order*”).

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- *Business Data Services Data Collection Protective Order*⁵ in WC Docket No. 05-25, RM-10593.⁶

Highly confidential treatment of the designated portions of the unredacted document is required to protect information regarding the “locations that companies serve with last-mile facilities,”⁷ and “[p]ricing . . . information” for business data services.⁸ The designated information is not available from public sources, and, “if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.”⁹

Consistent with the procedures specified in the protective orders and the *Second Further Notice and Further Notice*, Sprint is submitting an original and copy of the unredacted version for filing in WC Docket No. 16-143, and two additional copies of the unredacted version for filing in WC Docket No. 05-25.

Please contact me if you have any questions or require any additional information.

Sincerely,



Shiva Goel

Counsel to Sprint Corporation

⁵ See *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans et al.*, Order and Protective Orders, DA 15-1387, 30 FCC Rcd. 13,680, App. A (Wireline Comp. Bur. 2015).

⁶ See also *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, 15-247, and 05-25, RM-10593, Order, 31 FCC Rcd. 7104 (Wireline Comp. Bur. 2016) (extending “the procedures for submitting and accessing Confidential Information adopted in the” protective orders specified above “to Confidential Information filed in the record in WC Docket No. 16-143”).

⁷ *Second Protective Order* ¶ 6.

⁸ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA 12-199, 27 FCC Rcd. 1545, 1548 (Feb. 13, 2012) (supplementing the *Second Protective Order*) (“*Second Supplement to Second Protective Order*”).

⁹ *Second Protective Order* ¶ 3; *Second Supplement to Second Protective Order* at 1546; *Data Collection Protective Order* ¶ 5.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Regulation of Business Data Services for)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers)	
)	
)	
Business Data Services in an Internet)	WC Docket No. 16-143
Protocol Environment)	
)	
)	
Special Access for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
_____)	

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY.....	1
I. THE RECORD DEMONSTRATES THAT TRANSPORT COMPETITION IS INSUFFICIENT TO WARRANT NATIONWIDE DEREGULATION.....	2
II. NATIONWIDE TRANSPORT DEREGULATION WILL UNDERMINE THE COMPETITIVE MARKET TEST AND HIT RURAL AMERICA HARDEST.	9
CONCLUSION	12

INTRODUCTION AND SUMMARY

Sprint has long supported the Commission’s objective of using a data-driven process to identify and deregulate competitive markets for business data services (“BDS”). The *2017 BDS Order*, however, used unreliable indicia of local competition to distinguish competitive from non-competitive DS1 and DS3 channel terminations—and disavowed any need to evaluate local competition for DS1 and DS3 interoffice transport. The *2017 BDS Order* thus eliminated regulation in areas where price cap incumbent local exchange carriers (“ILECs”) face no meaningful market constraints on the rates that they charge. For the many businesses that continue to depend on low-bandwidth TDM, this near-complete deregulation of monopoly markets threatened to increase rates and reduce competition for BDS connectivity and critical enterprise technology services, as Sprint and other proceeding participants at the time warned.

Barely a year into deregulation, those fears have become reality. Contrary to the predictions made in the *2017 BDS Order*, competition has been unable to keep ILEC TDM rates in check, including for DS1 and DS3 transport. As a result, Sprint is now experiencing significant price increases for newly deregulated DS1s and DS3s—channel terminations and interoffice transport alike—as [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]. Even large ILECs are beginning to acknowledge that competitive transport options are neither available nor feasible to deploy in many parts of the country, and to question the merits of blanket deregulation in areas where they buy transport from the incumbent.

With the issue again before the Commission on remand, Sprint urges the Commission to pursue a more tailored approach than nationwide deregulation for DS1 and DS3 transport services sold by price cap ILECs. Sprint also urges the Commission not to deregulate transport

services sold by rate-of-return carriers who elect for incentive regulation, which would exacerbate the imbalance of the 2017 *BDS Order* and further harm businesses that depend on dedicated connectivity.

I. THE RECORD DEMONSTRATES THAT TRANSPORT COMPETITION IS INSUFFICIENT TO WARRANT NATIONWIDE DEREGULATION.

In the *Second Further Notice*, the Commission proposes to “eliminate nationwide ex ante pricing regulation of price cap carriers’ TDM transport services” based on its determination that there is enough “competition and competitive pressure on TDM transport services in price cap areas” to justify blanket regulatory relief.¹ The data on which the Commission relies, however, does not support the conclusion reached. The Commission’s figures do not meaningfully measure transport competition in any part of the country, let alone in the areas that the Commission seeks to deregulate. Moreover, due to its overbreadth, the Commission’s data obscures significant local variation in the availability of competitive alternatives to ILEC interoffice transport.

For example, as proof of near ubiquitous transport competition, the *Second Further Notice* relies on statistics compiled by AT&T purporting to show that “some major urban areas have as many as 28 transport competitors while second-tier MSAs commonly have more than a dozen competitors.”² However, AT&T’s figures merely tally the number of “Unique Providers Listing Fiber Facilities In Response to [the] 2013 Data Request.”³ They do not measure the

¹ See *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146, ¶ 152 (rel. Oct. 24, 2018) (“*Order*,” “*Second Further Notice*,” or “*Further Notice*”).

² *Id.* ¶ 149.

³ Letter from James P. Young, Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC at 5, WC Docket Nos. 16-143 et al. (filed Oct. 25, 2016).

number of companies that offer a substitute for interoffice DS1 and DS3 facilities in the MSA, and thus do not measure the number of “transport competitors” in the MSA.

The circumstances requiring BDS customers to purchase ILEC interoffice transport illustrate why the number of firms with fiber in the ground says so little. When a carrier buys a DS1 or DS3 from an ILEC, the carrier may not have facilities collocated at the ILEC end office that serves the end user and a cross-connect between those collocated facilities and the ILEC channel termination.⁴ Thus, to complete a BDS circuit, the carrier must buy a channel termination connecting the end user to an ILEC end office and interoffice transport connecting that end office to another ILEC end office where the customer can accept the traffic.⁵ For the purchasing carrier to benefit from a competitive alternative to the interoffice transport element of the BDS circuit, a transport competitor must be collocated at the end office serving the end user and must feasibly interconnect with the purchasing carrier’s network.⁶ Companies reporting fiber in the ground somewhere in the MSA, however, are often unlikely to meet those requirements. For example, their networks may not reach the right ILEC end offices. Moreover,

⁴ See Letter from Paul Margie, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC at 4, WC Docket Nos. 16-143 et al. (filed Nov. 9, 2016) (“Sprint November 9, 2016 Ex Parte”); Letter from John T. Nakahata, Counsel, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC at 24-25, WC Docket Nos. 16-143 et al. (filed Mar. 27, 2017) (“Windstream March 27, 2017 Ex Parte”); Letter from Paul Margie, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC at 17, WC Docket Nos. 16-143 et al. (filed Apr. 13, 2017) (“Sprint April 13, 2017 Ex Parte”); Letter from Paul Margie, Counsel, Sprint Corporation, and John T. Nakahata, Counsel, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC at 8-9, WC Docket Nos. 16-143 et al. (filed Apr. 17, 2017) (“Sprint-Windstream April 17, 2017 Ex Parte”).

⁵ See Sprint November 9, 2016 Ex Parte at 4; Windstream March 27, 2017 Ex Parte at 25; Sprint April 13, 2017 Ex Parte at 17; Sprint-Windstream April 17, 2017 Ex Parte at 8.

⁶ See Sprint April 13, 2017 Ex Parte at 17; Windstream March 27, 2017 Ex Parte at 24-25.

the fiber reported may simply represent ring or long-haul sections of the network, and not transport links between the competitor's network and *any* ILEC end office.⁷

In addition to failing to test for the availability of transport competition, AT&T's statistics are too aggregated to justify nationwide deregulation. As the Commission recognized in the *Suspension Order*,⁸ MSAs are too large and geographically diverse for MSA-wide figures to say anything important about BDS competition.⁹ Even though many MSAs cover everything from dense central business districts to vast rural expanses where the ILEC is and will remain the only BDS provider, AT&T made no effort to determine the extent to which facilities located in areas of concentrated demand are driving the number of companies reporting the presence of fiber. It simply grouped all areas together to create the illusion of ubiquitous competition. The Commission should not base its determination on AT&T's flawed approach.

⁷ See, e.g., Letter from Paul Margie, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC at 10, WC Docket Nos. 16-143 et al. (filed Mar. 22, 2017); Declaration of Ed Carey ¶ 9(a), appended as Exhibit A to Opposition to ILEC Direct Cases of Sprint Corporation, WC Docket No. 15-247 (filed Feb. 5, 2016); Reply Comments of Sprint Corporation at 61, WC Docket Nos. 16-143 et al. (filed Aug. 9, 2016). See also Third Declaration of Matthew J. Loch ¶¶ 2-10, appended as Attachment A to Reply Comments of TDS Metrocom, LLC, WC Docket Nos. 05-25 et al. (filed Feb. 19, 2016); Sprint November 9, 2016 Ex Parte at 4 (noting that “even if a competitive provider has a fiber ring in the area, which is not the case in many parts of the country, it does not follow that a competitor has deployed transport facilities to connect channel terminations to the relevant central offices in order to complete a given BDS circuit”).

⁸ See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Report and Order, FCC 12-92, 27 FCC Rcd. 10,557, 10,573-74 ¶ 36 (2012) (“*Suspension Order*”).

⁹ See *id.*; see also Sprint-Windstream April 17, 2017 Ex Parte at 7-8 (noting that “the Washington, DC-area MSA includes rural Maryland between Frederick and the Pennsylvania border in the north, and rural Spotsylvania County in the south, and that it is “preposterous to suggest that competitive transport fiber in Washington, DC itself says anything about the transport markets in those rural communities”).

Along the same lines, AT&T's statistics do not distinguish between areas currently subject to pricing flexibility from areas currently under price cap regulation, even though the former are more likely to include pockets of competition. Thus, relative to an analysis limited to areas where the Commission's proposal would *actually* eliminate pricing regulation, AT&T's excessively aggregated survey overstates the availability of transport competition. Importantly, the Commission's proposal to eliminate regulation without conducting a competitive analysis of the areas that would be deregulated is also completely inconsistent with the *Order* accompanying the *Further Notice* and *Second Further Notice*. In the *Order*, the Commission explicitly "decline[d] to remove ex ante pricing regulation of TDM transport services"¹⁰ sold by rate-of-return carriers precisely because the record lacked data about the level of competition in rate-of-return service areas.¹¹

The two other competition metrics identified in the *Second Further Notice* suffer similar flaws. The Commission asserts that "92.1% of buildings served with BDS demand in price cap territories were within a half mile of competitive fiber transport facilities," and that "89.6% of all price cap census blocks with BDS demand had at least one served building within a half mile of competitive fiber."¹² Once again, these statistics do not disaggregate price cap areas from areas previously granted pricing flexibility. They therefore overstate the availability of competition in areas where the Commission's proposal would eliminate ex ante pricing regulation. In addition, these statistics confuse the mere presence of fiber near an end user's location with the actual availability of a competitive alternative to ILEC interoffice transport. Yet for a customer

¹⁰ *Further Notice* ¶ 158.

¹¹ *Id.* ¶ 80 & n.214.

¹² *Id.* ¶ 149.

purchasing an ILEC DS1 or DS3, it does not matter how closely to the end user a company happens to have transiting fiber running from one place to another. What matters is whether that company is collocated at the ILEC end office serving the end user and can interconnect with the purchasing carrier's network—conditions for which the Commission's data does not test.

While the *Second Further Notice* assumed near ubiquitous competition because of the analytical problems discussed above, the record in fact shows that interoffice transport competition, at best, varies too significantly to warrant blanket deregulation. BDS purchasers explained that they often have no choice but to pair ILEC channel terminations with interoffice transport from the ILEC,¹³ a fact that AT&T confirmed during the 2016 tariff investigation.¹⁴ They also explained that although competitive transport providers may be present in dense central business districts,¹⁵ aggregating ILEC DS1 and DS3 channel terminations into their facilities is often infeasible,¹⁶ and availability “falls off dramatically” in rural and suburban America in any event.¹⁷ Data from the *2015 Collection* corroborate these marketplace experiences. As Sprint previously explained, the FCC analysis showing that ILECs possess

¹³ See, e.g., Sprint November 9, 2016 Ex Parte at 4 (explaining why customers “purchasing an ILEC channel termination must also purchase transport elements from the ILEC”).

¹⁴ Reply of AT&T to Petitions to Reject or Suspend and Investigate Ameritech TN 1847, Pacific Bell TN 539, and Southwestern Bell TN 3428 (filed July 14, 2016) (noting that TDM BDS “[c]ustomers typically purchase channel terminations together with mileage or multiplexing”). CenturyLink acknowledged that where it buys BDS outside of its incumbent territory, competitive transport is only available about half of the time. See Letter from Bryan N. Tramont, Counsel, CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143 et al. (filed Apr. 12, 2017).

¹⁵ See Declaration of Michael Chambless ¶ 10, attached to Comments of XO Communications, LLC, WC Docket No. 05-25 (filed Jan. 27, 2016) (“XO Chambless Declaration”); see also Sprint-Windstream April 17, 2017 Ex Parte at 8-9.

¹⁶ See Sprint November 9, 2016 Ex Parte at 4.

¹⁷ See XO Chambless Declaration ¶ 10; Sprint-Windstream April 17, 2017 Ex Parte at 8-9.

significant market power over DS1 and DS3 services evaluated the marketplace at the level of the full BDS circuit, including transport rate elements.¹⁸ If competitive transport were available as often as the *2017 BDS Order* assumed, ILEC revenue shares for DS1 and DS3 services would not have been as high as the *2015 Collection* revealed, and the impact of competitive supply at the building location on ILEC rates likewise would not have been as high as reported.¹⁹

Importantly, even price cap ILECs have begun to acknowledge that the availability of transport competition varies tremendously by geography. Just last month, AT&T complained that a Commission proposal would provide insufficient protection against access stimulation because it would “allow[] pumpers to establish facilities in areas where there are no realistic transport alternatives and where it would be prohibitively expensive to deploy them.”²⁰ Likewise, in the lead up to the *Order*, AT&T urged the Commission to evaluate BDS competition for rate-of-return carriers on a county-by-county, firm-by-firm basis before developing a competitive market test for *all* last-mile rate elements, emphasizing that competitive conditions in the marketplace vary too much to draw conclusions from the experience of just one carrier.²¹ While Sprint questions whether AT&T’s recommended analysis of rate-of-return carrier service areas yields adequate precision, it supports the application of *some kind* of competitive market test in price cap areas at the bare minimum. Indeed, there is no

¹⁸ See Sprint November 9, 2016 Ex Parte at 3; Windstream March 27, 2017 Ex Parte at 25.

¹⁹ See Sprint March 22, 2017 Ex Parte at 16-17 (noting that DS1 and DS3 rates fall from 25% to as much as 51% as ILECs face greater in-building competition).

²⁰ Letter from Matt Nodine, Assistant Vice President, Federal Regulatory, AT&T Services Inc., to Marlene H. Dortch, Secretary, FCC at 2, WC Docket No. 18-155 (filed Dec. 3, 2018) (“AT&T Access Stimulation Ex Parte”).

²¹ See Reply Comments of AT&T Services Inc. at 6-8, WC Docket No. 17-144 (filed July 2, 2018); see also *Further Notice* ¶ 162.

legitimate reason for the Commission to conduct an exacting evaluation of competition where AT&T *buys* BDS only to forgo any analysis at all where AT&T *sells* it.

ILEC rate increases in the wake of the *2017 BDS Order* offer perhaps the best evidence that competition in this marketplace is largely insufficient. In 2018, a large price cap ILEC explicitly informed Sprint that it is marking up TDM BDS rates, for channel terminations and transport alike, across portions of its service territory newly deregulated by the *2017 BDS Order*. No longer constrained by price caps, this ILEC increased Sprint's monthly recurring charges by [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] and [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]. As a result, Sprint expects to spend more than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] in rate increases over an [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] from just this one incumbent provider. Moreover, the provider that increased rates is the [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]. Sprint fully expects [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].

Importantly, the need for precision when deregulating transport services applies equally to price cap ILECs and rate-of-return carriers that elect for incentive regulation.²² While

²² See *Further Notice* ¶ 157 (proposing to eliminate ex ante pricing regulation for TDM transport services sold by electing carriers).

locations within electing carrier service areas may prove harder to serve on average, both rate-of-return and price cap ILEC territories contain vast rural and suburban expanses where BDS competition does not exist and is very unlikely to develop. Moreover, contrary to the Commission's suggestion in the *Further Notice* and *Second Further Notice*,²³ the fact that transport facilities are higher capacity links that carry a large volume of traffic does not mean that entry is always or even often possible. In end offices serving areas with low business density, for example, competitive demand is usually far too low to justify offering an ILEC transport alternative.²⁴

II. NATIONWIDE TRANSPORT DEREGULATION WILL UNDERMINE THE COMPETITIVE MARKET TEST AND HIT RURAL AMERICA HARDEST.

In the many parts of the country where there are no realistic transport alternatives (and where constructing competing connections would be infeasible), nationwide deregulation will continue to expose consumers to the precise kind of rate increases that have begun to occur following the *2017 BDS Order*. As a result, price cap ILECs will be able to counteract price caps *even where the 2017 BDS Order deemed pricing regulation necessary*. As Sprint explained previously, “[r]emoving transport from Phase I price caps would create an enormous loophole” because it “would allow incumbents . . . to simply raise DS1 and DS3 transport prices to offset any price cap reductions for channel terminations, thereby ensuring that the total BDS price for a

²³ See *Further Notice* ¶¶ 148, 158 & n.397.

²⁴ See AT&T Access Stimulation Ex Parte at 2 (noting that there are “areas where there are no realistic transport alternatives and where it would be prohibitively expensive to deploy them”); see also Sprint November 9, 2016 Ex Parte at 4 (noting that even where a competitor has a transport facility, “the central offices at issue must have enough DS1 or DS3 demand to fill the higher capacity transport connection” for the competitor to permit a customer to “aggregate DS1 and DS3 channel terminations into higher capacity transport”).

circuit remains at the profit-maximizing level for the ILEC and eliminating any benefits that price cap reductions would have for those BDS consumers.”²⁵

Nothing in the record supports the view that areas deemed non-competitive for channel terminations somehow benefit from vibrant transport competition. To the contrary, these are the very places where transport competition is least likely to be available, as the record makes clear.²⁶ That is especially the case given the understanding of competition used in the *2017 BDS Order*’s competitive market test. Indeed, even the Commission acknowledged that the *2017 BDS Order*’s view of what counts as competition was unusually expansive.

Migration to Ethernet will not solve the problem nor obviate the need for TDM pricing constraints.²⁷ For the foreseeable future, much of rural America, and parts of the suburbs, will continue to rely on DS1s and DS3s. Even companies like Sprint that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]. Moreover, in important ways, declining TDM volumes can make the constraints imposed by pricing regulation even more critical. As TDM purchases fall in denser areas where fiber has been or in the foreseeable future will be deployed, purchasers in rural and suburban areas will be much less able to benefit from volume or term discounts that can at least partially counteract rising TDM monthly recurring charges, and thus will be even more exposed to high rates absent regulation. **[BEGIN HIGHLY CONFIDENTIAL]**

²⁵ Sprint November 9, 2016 Ex Parte at 5.

²⁶ See *supra* notes 13-21.

²⁷ See *Second Further Notice* ¶ 154 (seeking comment on the extent to which “the increase in demand for packet-based business data services and the resulting decrease in demand for TDM services affected competition for TDM transport”).

[END HIGHLY CONFIDENTIAL].

Finally, Sprint emphasizes that Ethernet, where available, does not ensure a competitive outcome for BDS consumers. In many locations where Sprint has migrated to Ethernet, the ILEC remains the only BDS provider available. Moreover, ILECs continue to charge an exorbitant premium for Ethernet BDS in the absence of effective competition. As explained previously in the record, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].²⁸ [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL].²⁹ Just this past month, Sprint again compared the [BEGIN HIGHLY

²⁸ See [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]; Declaration of Ed Carey ¶¶ 2-7 (“Carey Declaration”), attached as Exhibit C to Comments of Sprint, WC Docket Nos. 16-143 et al. (filed June 28, 2016).

²⁹ See [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] Carey Declaration ¶¶ 4-5 (explaining that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]); *see also* Letter from Thomas Jones, Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, at 3, WC Docket Nos. 16-143 et al. (filed July 21, 2016) (noting that “it is standard business practice for buyers and sellers of Business Data Services to buy and sell services on a building-by-building rates”).

CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] rates that apply [BEGIN
HIGHLY CONFIDENTIAL] [END
HIGHLY CONFIDENTIAL] against the [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL] rates that apply [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL]. The comparison showed
that these ILECs continue to charge significantly more for Ethernet circuits [BEGIN HIGHLY
CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL].

Specifically, for Ethernet BDS [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY
CONFIDENTIAL] charges a supracompetitive premium of [BEGIN HIGHLY
CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] depending on
capacity, while [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY
CONFIDENTIAL] charges a premium ranging from [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL], again, depending on capacity. For both
providers, these premiums [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL], and thus
foreclose any conclusion that the mere availability of ILEC Ethernet is enough to ensure just and
reasonable rates for the low-bandwidth BDS consumers at issue in this proceeding.

CONCLUSION

The record demonstrates that competition cannot constrain ILEC pricing for low-
bandwidth TDM services, including DS1 and DS3 interoffice transport, everywhere in—or even

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in the majority of—the country. The Commission therefore should decline to adopt its proposals to eliminate ex ante pricing regulation on a nationwide basis.

Respectfully submitted,



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